

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Saltville Gas Storage Company, L.L.C.

Docket No. CP02-430-003

ORDER CLARIFYING ORDER AND DENYING REHEARING

(Issued January 28, 2004)

1. Public Service Company of North Carolina (PSNC) requests clarification or, in the alternative, rehearing of the Commission's September 11, 2003 Order in this proceeding.¹ As discussed below, the September 11, 2003 Order is in part clarified and PSNC's request for rehearing is denied.

Background

2. On February 4, 2003, the Commission issued Saltville Gas Storage Company, L.L.C. (Saltville) a limited jurisdiction blanket certificate under Section 284.224 of the Commission's regulations based on Saltville's representations that it qualified as a Hinshaw facility exempt from the Commission's jurisdiction under Section 1(c) of the Natural Gas Act.² On rehearing, Dominion Greenbrier, Inc. (Dominion Greenbrier) challenged Saltville's status as a Hinshaw company on the grounds that Saltville had failed to show that it would store sufficient volumes of gas in Virginia to qualify for the exemption. Following a technical conference convened to consider information relevant to Saltville's jurisdictional status, the Commission issued the September 11 Order granting Dominion's request for rehearing and directing Saltville to apply for a certificate under Section 7 of the Natural Gas Act. In order to avoid interrupting storage supplies for the coming winter, the Commission allowed Saltville to provide service under its limited jurisdiction blanket certificate on an interim basis. For that purpose, the Commission

¹Saltville Gas Storage Company, L.L.C., 104 FERC ¶ 61,273 (2003).

² Saltville Gas Storage Company, L.L.C., 102 FERC ¶ 61,123 (2003).

directed Saltville to charge the rates that had been recently approved in Docket No. PR03-13-000 for service under its limited jurisdiction blanket certificate.³

PSNC's Request for Clarification or Rehearing

3. On October 10, 2003, PSNC filed its request for clarification or, in the alternative, rehearing of the September 11 Order. PSNC requests that the Commission clarify that, “notwithstanding its assertion of jurisdiction over Saltville, the Commission did not intend and will not upset the freely negotiated arrangements between PSNC and Saltville for long term storage, which became effective August 1, 2003.” In the event the requested clarification is denied, PSNC asks for rehearing on the grounds that the Commission did not engage in reasoned decision-making when it failed to address fully PSNC's comments that the Commission honor all of the terms and conditions in PSNC's long-term firm storage agreement between it and Saltville and that the Commission did not engage in reasoned decision-making when it left to another docket the issue of preserving PSNC's long-term firm storage arrangement with Saltville.

Discussion

4. To the extent PSNC seeks assurance that its existing contract with Saltville will not be disturbed under any circumstances as result of Saltville's jurisdictional status, that request is denied. We will clarify only that the order directing Saltville to file for NGA certificate authorization *by itself* does not affect PSNC's agreement with Saltville. Initial rates and services for Saltville under the Natural Gas Act will be determined in Saltville's pending certificate case in Docket No. CP04-13-000, *et al.* We cannot determine here what effect if any that proceeding will have on PSNC's agreement with Saltville. As a participant in that case, however, PSNC will have every opportunity to advocate its position as to the appropriate initial rates for service under Saltville's NGA blanket certificate for transportation and storage.⁴

³ Saltville Gas Storage Company, L.L.C., 104 FERC ¶ 61,237 (2003). PSNC raised the same issue in Docket No. PR03-13-00 that it has raised here but did not seek rehearing of the order approving a Stipulation and Agreement establishing rates in that proceeding.

⁴ We note that the August 29, 2003, letter order approving the stipulation and agreement in Docket No. PR03-13-000 stated that the Commission would not address PSNC's contract rates “in the certificate order.” 104 FERC ¶ 61,237 at 61,808 (2003). This statement in an unrelated proceeding only indicates that the contact rates are not

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5. In its request for rehearing, PSNC argues that

[t]he Commission failed to engage in reasoned decision making when it did not clearly address PSNC's request that the Commission not disturb the terms and conditions in PSNC's long-term firm storage service agreement with Saltville in the event Saltville becomes subject to full NGA jurisdiction.

We disagree. The discussion in the September 11 Order is brief because Saltville's request is irrelevant to the issues in this proceeding. The September 11 Order reversed an earlier Commission determination and found that Saltville was jurisdictional under the Natural Gas Act. The validity of that finding was not dependent on rates not yet determined, in a certificate case not yet filed, at the time the order was issued. The rates required by the public interest for jurisdictional service will be determined on the basis of the record evidence in the pending certificate docket. Granting PSNC's request here would prejudice the outcome of that case.

6. PSNC argues additionally in support of its request that it entered into its long term firm storage agreement with Saltville when Saltville was operating under a limited jurisdiction certificate and that "the agreement was the subject of considerable negotiating between the parties." This statement by PSNC is more of a conclusion than an argument, however. It does not explain why an agreement that was never approved by the Commission, with a party thought to be nonjurisdictional should bind the Commission now that Saltville has been declared jurisdictional. Initial rates for new natural gas companies are decided in the proceeding where facilities and service are first certificated.⁵ There is no basis or record for deciding that issue here.

7. PSNC does not cite any case to the contrary in its application for rehearing. In the background section of its pleading, though, PSNC says that its comments in response to the staff technical conference in this proceeding indicated that its request was "consistent

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directly at issue in the certificate case. It was not intended to prevent PSNC from raising any relevant issues or advocating its position in the certificate proceeding pending in Docket No. CP04-3-000, et al.

⁵ See, e.g., *Atlantic Refining Co. v. Public Service Company of New York*, 360 U.S. 378 (1959).

with Commission precedent.” The only Commission precedent cited in PSNC’s comments on the technical conference is Egan Hub Partners, L.P. (Egan Hub).⁶ In that case, PSNC states, the Commission exercised Section 7 certificate jurisdiction over a storage facility that had been built under Section 311(a) (2) of the Natural Gas Policy Act and directed the company to apply for a certificate. According to PSNC, in the certificate proceeding “Egan Hub filed the existing contracts it entered into with its shippers as evidence of market support. These contracts were not changed or otherwise modified (and continuity of serviced was not disturbed) by the Commission in its order granting Egan Hub a certificate.”⁷

8. If anything, Egan Hub supports the outcome in the present case. In the certificate proceeding, the Commission authorized Egan Hub to charge market based rates and approved with some modifications its pro forma tariff “that generally complies with Part 284 of the Commission’s regulations.”⁸ Whether this had the effect of leaving prior contracts undisturbed is unclear from the order. What is clear, though, is that the Commission did not decide initial rates in the show cause proceeding where jurisdiction was determined. It left that issue to the certificate case as we have done here.

The Commission orders:

The Commission’s order of September 11, 2003, is clarified as set forth herein and PSNC’s request for rehearing is denied.

By the Commission.

(S E A L)

Magalie R. Salas
Secretary.

⁶ 73 FERC ¶ 61,334 (1995) (Order on Show Cause) and 77 FERC ¶ 61,016 (1996) (Order Issuing Certificates)

⁷ Comments of Public Service Company of North Carolina, July 9, 2003.

⁸ 77 FERC at 61,062.